

Donaldson v. U.S.
00-20067

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

CLARENCE DENEAL
DONALDSON,

Case No. 00-20067

Petitioner,

Honorable Arthur J. Tarnow
United States District Judge

v.

UNITED STATES OF AMERICA,

Respondent.

**ORDER DENYING MOTION TO VACATE, SET ASIDE,
OR CORRECT SENTENCE UNDER 28 U.S.C. §2255 [67]**

This case arises out of Petitioner's conviction and sentence for armed bank robbery. The Court sentenced Petitioner in March of 2003. Petitioner did not appeal his sentence to the Sixth Circuit.

Before the Court is Petitioner's motion to vacate, set aside, or correct his sentence under 28 U.S.C. §2255. Petitioner argues that his sentence was imposed in violation of *United States v. Booker* and *United States v. Fanfan*, 125 S.Ct. 756 (2005) because the Court increased his sentence based on factual findings that were not made by the jury.

In *Humphress v. United States*, 398 F.3d 855 (6th Cir. 2005), the Court held that *Booker/Fanfan* announced a new procedural rule which does not apply

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retroactively in collateral proceedings under §2255. The facts of this case are materially the same as those in *Humphress*. Therefore,

IT IS HEREBY ORDERED that Petitioner's motion to vacate, set aside, or correct his sentence under 28 U.S.C. §2255 is DENIED.

IT IS SO ORDERED.

s/Arthur J. Tarnow
Arthur J. Tarnow
United States District Judge

Dated: July 29, 2005

I hereby certify that a copy of the foregoing document was served upon counsel of record on July 29, 2005, by electronic and/or ordinary mail.

s/Theresa E. Taylor
Case Manager